



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Third Supplemental Agreement to Pixley Park Property Exchange Agreement and Improvement Agreement with GFLIP III, L. P., to Provide Time Extension

MEETING DATE: November 16, 2011

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute Third Supplemental Agreement to Pixley Park Property Exchange Agreement and Improvement Agreement with GFLIP III, L. P., to provide time extension.

BACKGROUND INFORMATION: The City and the developer, GFLIP III, L. P., entered into a land exchange agreement in December 2004 (Resolution No. 2004-248) per City Council's direction. As shown on Exhibits A and B, the land exchange agreement adjusts the property lines to reconfigure the Pixley Park C-Basin to allow development of the park site per the approved Pixley Park Conceptual Plan.

As part of the land exchange agreement, the developer agreed to construct all the required frontage improvements fronting the proposed park site on Auto Center Drive and to excavate the basin to conform to the final grading of the future park layout. The executed agreement gave the developer until December 2007 to complete the obligations of the agreement.

The developer entered into a Supplemental Agreement with the City on January 23, 2008, and a Second Supplemental Agreement on November 16, 2009 to extend the completion of the basin excavation to December 2011, due to problems with the ability of the developer's contractor to move and sell the excavated soil.

The developer's contractor has completed the majority of the public improvements and has excavated half of the basin. Due to the current economic climate, the grading of the basin will not be completed by the agreed upon date. The developer's contractor anticipated being able to sell dirt to be used as fill on other projects. These projects have not materialized as expected.

The developer is requesting to extend the completion date of the improvement agreement and the original land exchange agreement to December 31, 2014, to complete all the required improvements and grading of the park site. Since the City does not currently have funds to construct the proposed features at the park site, staff supports an extension to the completion date of the basin excavation and land exchange.

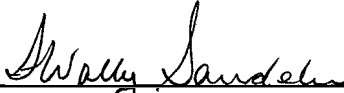
The developer has executed the Third Supplemental Agreement and paid the document preparation fees.

APPROVED:

Konradt Bartlam, City Manager

FISCAL IMPACT: There will be no direct fiscal impact on the extension of the basin excavation and land exchange completion date. The developer/contractor is responsible for the basin maintenance during the extension period; hence, the City's part of the maintenance cost will be reduced.

FUNDING AVAILABLE: Not applicable.



F. Wally Sandelin
Public Works Director

Prepared by Lyman Chang, Senior Civil Engineer

FWS/LC/pmf

Attachments

cc: GFLIP III, L. P.
Park Superintendent
Deputy Public **Works** Director – Utilities
Senior Civil Engineer

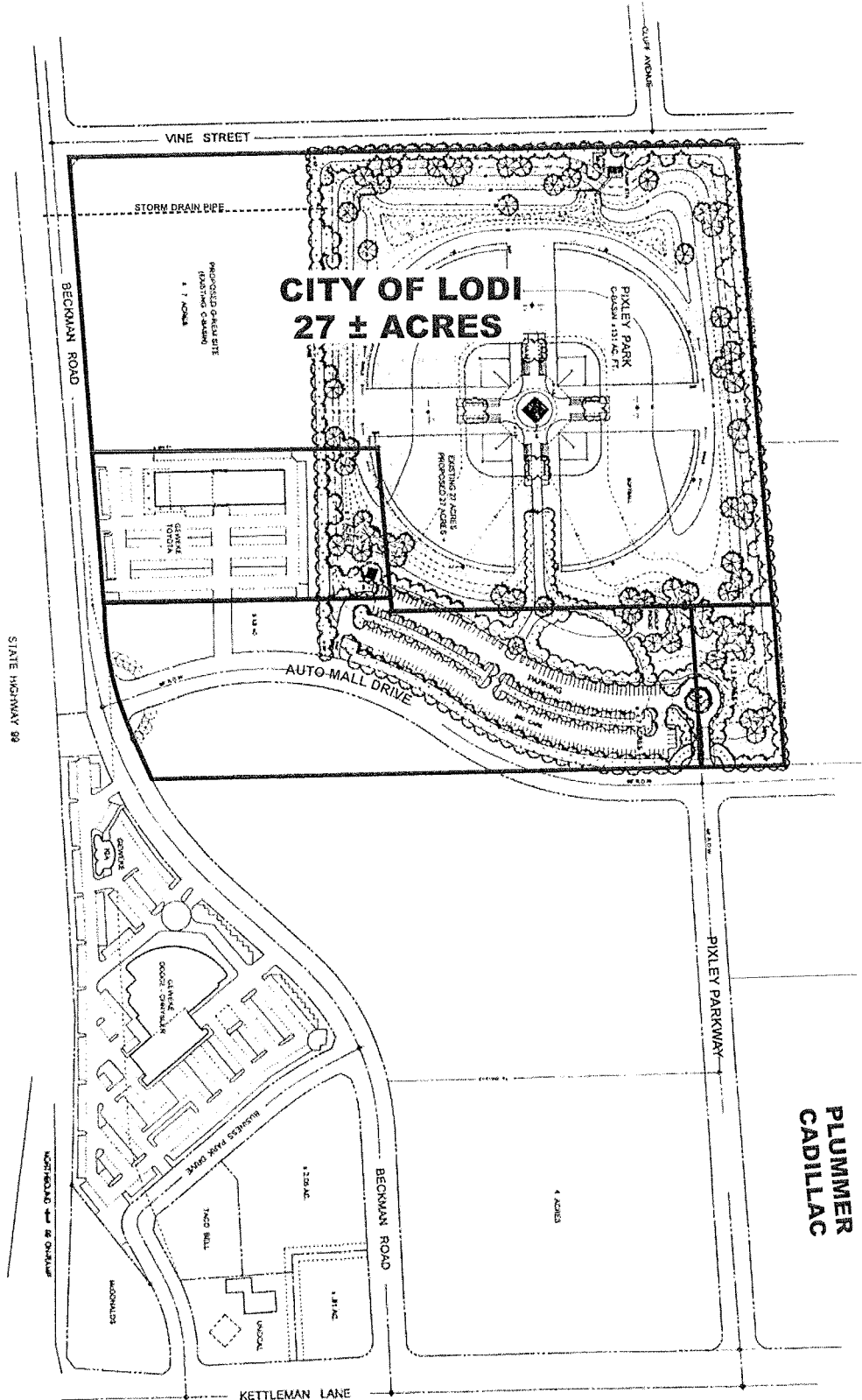


CITY OF LODI

PUBLICWORKS DEPARTMENT

EXHIBIT A

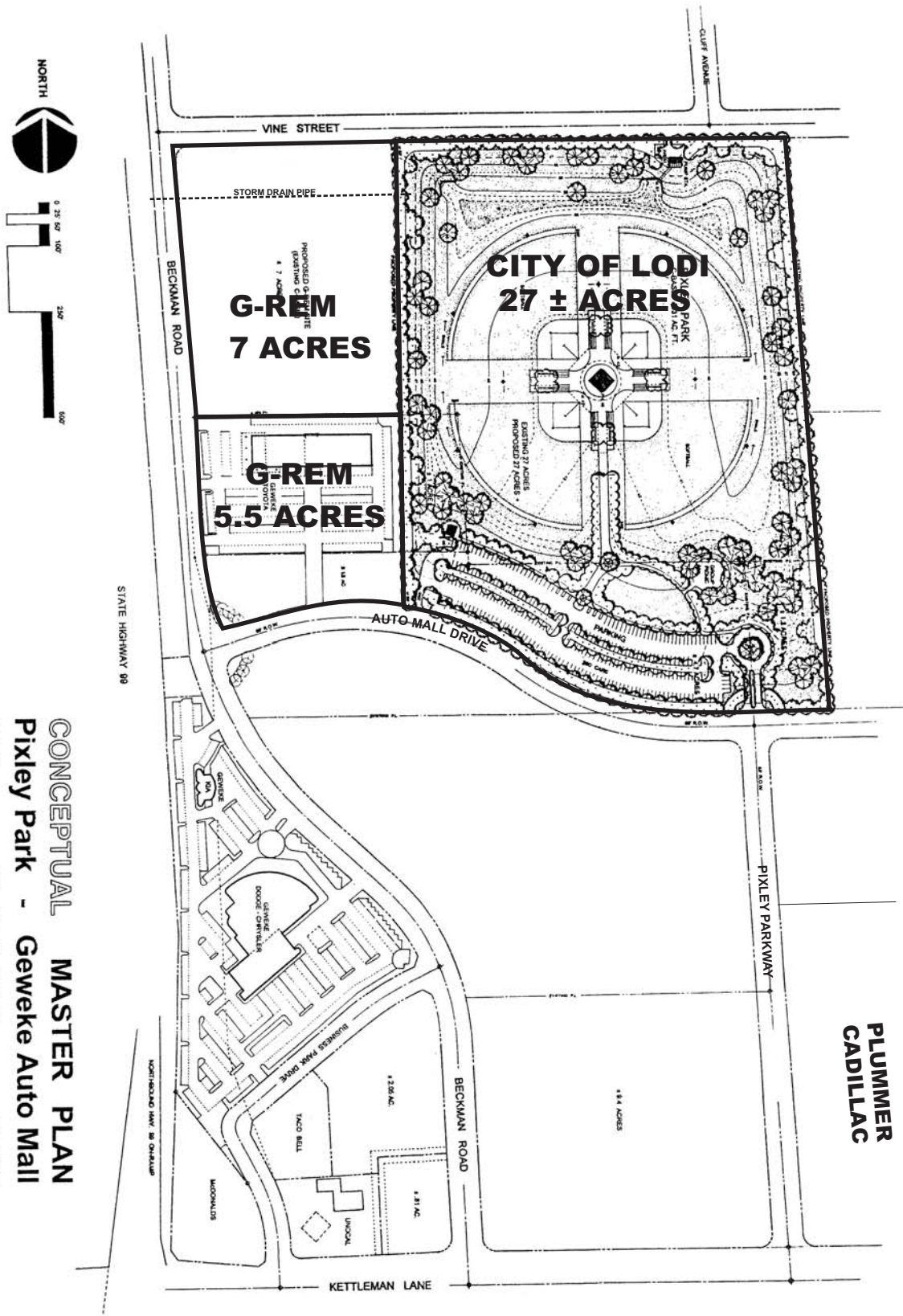
EXISTING LOT LINES



ONCEPTUAL MASTER PLAN
ixley Park - Geweke Auto Mall
REM, INC.
City of Lodi California
Lawrence A. Norstrom, ASLA Landscape Architect
July 2003



PROPOSED PROPERTY LINES



RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
City Clerk)
City of Lodi, City Hall)
221 Pine Street)
Lodi, CA 95241)

APN: 049-250-72

(Space Above for Recorder's Use Only)

**THIRD SUPPLEMENTAL AGREEMENT
to the
PIXLEY PARK
PROPERTY EXCHANGE AGREEMENT
AND
IMPROVEMENT AGREEMENT**

This Third Supplemental Agreement to the Pixley Park Property Exchange Agreement and the Improvement Agreement for The Public Improvements of Pixley Park Site Grading ("Third Supplemental Agreement") is made and entered into this _____ day of _____, 2011, by and between the City of Lodi, a municipal corporation ("CITY") and GFLIP III, L. P., a California Limited Partnership ("DEVELOPER"), (collectively the "Parties")

RECITALS:

WHEREAS, the Parties entered into the Pixley Park Property Exchange Agreement, dated November 29, 2004 ("Exchange Agreement"), to address the responsibilities of CITY and DEVELOPER for the Pixley Park property exchange; and

WHEREAS, the Parties have entered into the Addendum to the Pixley Park Property Exchange Agreement dated March 29, 2006 ("Addendum to Exchange Agreement"), to address the grading of the Pixley Park Site (described more fully in Item No. 2 of the Addendum to the Exchange Agreement); and

WHEREAS, the Parties have entered into an Improvement Agreement for the Public Improvements of Pixley Park Site Grading ("Improvement Agreement"), to address public improvements and grading of the Pixley Park Site; and

WHEREAS, the Parties have entered into a Supplemental Agreement to the Pixley Park Property Exchange Agreement and Improvement Agreement ("Supplemental Agreement") dated January 23, 2008, to extend the basin excavation and the land exchange completion date to December 31, 2009; and

WHEREAS, the Parties have entered into a Second Supplemental Agreement to the Pixley Park Property Exchange Agreement and Improvement Agreement ("2nd Supplemental Agreement") dated November 16, 2009, to extend the basin excavation and the land exchange completion date to December 31, 2011; and

WHEREAS, DEVELOPER desires to extend the terms of the Exchange Agreement and Improvement Agreement to allow additional time for the basin excavation at the Pixley Park Site.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, it is hereby agreed by and between the Parties as follows:

1. This Third Supplemental Agreement supplements the Exchange Agreement, Addendum to Exchange Agreement, the Improvement Agreement, Supplemental Agreement, and 2nd Supplemental Agreement previously executed by the Parties.
2. The Parties agree to extend the completion date of the required improvements and property exchange as set forth in the various agreements entered into by the parties and described in paragraph 1 above, to and including December 31, 2014.
3. DEVELOPER shall provide and keep current the necessary securities and insurance as specified in the Exchange Agreement, Addendum to Exchange Agreement and Improvement Agreement.
4. All other terms and conditions of the Exchange Agreement, Addendum to Exchange Agreement Improvement Agreement, Supplemental Agreement, and the 2nd Supplemental Agreement shall remain unchanged, except as modified hereinabove.
5. DEVELOPER agrees to pay all additional costs for preparation and execution of this Third Supplemental Agreement.
6. This Third Supplemental Agreement shall run with the land and be binding on the DEVELOPER, its heirs, successors or assigns.
7. A copy of this Third Supplemental Agreement shall be recorded in the office of the San Joaquin County Records, P. O. Box 1968, Stockton, California, 95201-1968.
8. Any notice required to be given by the terms of this Third Supplemental Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or in three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

Notices required to be given to CITY shall be addressed as follows

F Wally Sandelin
Public Works Director
City of Lodi
P O Box3006
Lodi, CA 95240-1910

Notices required to be given to DEVELOPER shall be addressed as follows

GFLIP III L P , a California Limited Partnership

DARYL GFWERKE
1139 E. KETTLEMAN LANE
LODI, CA 95240

IN WITNESS WHEREOF, the Parties hereto have set their hands the day, month and year appearing opposite their names.

CITY OF LODI, a municipal corporation

Dated: _____ 2011

By: _____
Konrad Bartlam, City Manager

Attest: _____
Randi Johl, City Clerk

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA,)
COUNTY OF SAN JOAQUIN)

On _____ before me, _____, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Signature of Notary Public)

Seal

GFLIP III, L. P., a California Limited Partnership

Dated: 9/29/ 2011

By: _____
Name: DARVIL CORWICK
Title: TRUSTEE, DARVIL CORWICK AND PAUL CORWICK FAMILY TRUST, GENERAL PARTNER

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA,)
COUNTY OF SAN JOAQUIN)

On SEPTEMBER 29TH 2011 before me, JYOTISHNA KUMAR, personally appeared DARVIL CORWICK personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

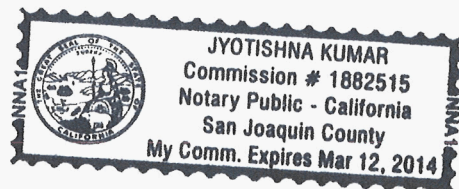
WITNESS my hand and official seal.

Jyotishna Kumar
(Signature of Notary Public)
(Seal of Notary Public)

Seal

Approved as to Form:

D. Stephen Schwabauer
D. Stephen Schwabauer
City Attorney



A RESOLUTION OF THE LODI CITY COUNCIL APPROVING THIRD
SUPPLEMENTAL AGREEMENT TO PIXLEY PARK PROPERTY
EXCHANGE AGREEMENT AND IMPROVEMENT AGREEMENT

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WHEREAS, the City of Lodi and the developer, GFLIP III, L. P., entered into a land exchange agreement in December 2004 to reconfigure the Pixley Park C-Basin to allow development of the park site per the approved Pixley Park Conceptual Plan. As part of the land exchange agreement, the developer agreed to construct all the required frontage improvements fronting the proposed park site on Auto Center Drive and to excavate the basin to conform to the final grading of the future park layout. The executed agreement gave the developer until December 2007 to complete the obligations of the agreement; and

WHEREAS, the developer entered into a Supplemental Agreement with the City on January 23, 2008, and a Second Supplemental Agreement on November 16, 2009, to extend the completion of the basin excavation to December 2009 and December 2011, respectively, due to difficulties in moving and selling the excavated soil; and

WHEREAS, the developer requested to extend the completion date of the improvement agreement and the original land exchange agreement to allow extra time to complete all the required improvements and grading of the park site. Since the City does not currently have funds to construct the proposed features at the park site, staff supports an extension to the completion date of the basin excavation and land exchange to December 31, 2014; and

WHEREAS, the developer has executed the Supplemental Agreement and has paid the required document preparation fees.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the Third Supplemental Agreement to the Pixley Park Property Exchange Agreement and Improvement Agreement with GFLIP III, L. P.; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute the agreement on behalf of the City.

Dated: November 16, 2011

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I hereby certify that Resolution No. 2011-179 was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 16, 2011, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Katzakian, Nakanishi, and
Mayor Johnson

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Mounce

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk

CITY COUNCIL

BOB JOHNSON, Mayor
JOANNE L. MOUNCE,
Mayor Pro Tempore
LARRY D. HANSEN
PHIL KATZAKIAN
ALAN NAKANISHI

CITY OF LODI

PUBLIC WORKS DEPARTMENT

CITY HALL, 221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 333-6706
FAX (209) 333-6710
EMAIL pwdept@lodi.gov
<http://www.lodi.gov>

KONRADT BARTLAM
City Manager
RANDI JOHL
City Clerk
D. STEVEN SCHWABAUER
City Attorney
F. WALLY SANDELIN
Public Works Director

November 10, 2011

GFLIP III, L. P.
Daryl Geweke
1139 E. Kettleman Lane
Lodi, CA 95240

SUBJECT: Adopt Resolution Authorizing City Manager to Execute Third Supplemental Agreement to Pixley Park Property Exchange Agreement and Improvement Agreement with GFLIP III, L. P., to Provide Time Extension

Enclosed is a copy of background information on an item on the City Council agenda of Wednesday, November 16, 2011. The meeting will be held at 7 p.m. in the City Council Chamber, Carnegie Forum, 305 West Pine Street.

This item is on the consent calendar and is usually not discussed unless a Council Member requests discussion. The public is given an opportunity to address items on the consent calendar at the appropriate time.

If you wish to write to the City Council, please address your letter to City Council, City of Lodi, P. O. Box 3006, Lodi, California, 95241-1910. Be sure to allow time for the mail. Or, you may hand-deliver the letter to City Hall, 221 West Pine Street.

If you wish to address the Council at the Council Meeting, be sure to fill out a speaker's card (available at the Carnegie Forum immediately prior to the start of the meeting) and give it to the City Clerk. If you have any questions about communicating with the Council, please contact Randi Johl, City Clerk, at (209) 333-6702.

If you have any questions about the item itself, please call Lyman Chang, Senior Civil Engineer, at (209) 333-6800, extension 2665.



for: F. Wally Sandelin
Public Works Director

FWS/pmf

Enclosure

cc: City Clerk